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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,139	06/30/2003	Sanjay Ghemawat	0026-0029	3005
44989	7590	01/30/2007		
HARRITY SNYDER, LLP 11350 Random Hills Road SUITE 600 FAIRFAX, VA 22030			EXAMINER THAI, HANH B	
			ART UNIT 2163	PAPER NUMBER
			MAIL DATE 01/30/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/608,139

Applicant(s)

GHEMAWAT ET AL.

Examiner

Hanh B. Thai

Art Unit

2163

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 29 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-8 and 19-27.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues: "Jindal et al. does not disclose or suggest identifying ones of the servers to store a replica to the data based on at least one of utilization of the servers" (response 12/29/06, pages 5-6). Examiner respectfully disagrees.

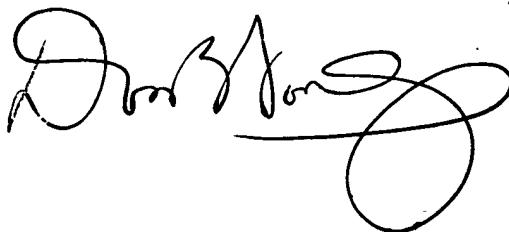
At column 4, lines 40-67, Jindal et al. discloses:

"In a present embodiment of the invention, information concerning the operation of computer servers executing a replicated service is collected and processed to identify a preferred server (e.g., the server with the smallest load or shortest response time). Illustrative pieces of information that are collected include a server's response time, its distance from a central server (such as a name server providing DNS services), its operational status (e.g., whether it is up or down), etc.

For purposes of the present invention a replicated service is a service (e.g., web browsing, electronic mail) that is available on multiple servers. For example, an organization providing a service or application that is visited or invoked by numerous clients may employ several web servers to handle the requests. Each of the several servers is considered to operate a separate instance of the replicated service or application. Individual users may thus be routed to, and their requests satisfied by, any of the several servers.

The collected information is then analyzed and a preferred server is identified in accordance with a selected policy. In accordance with one illustrative policy, the preferred server is the server that is least-loaded. Another policy identifies the preferred server as being the closest server. After the preferred server is identified, subsequent requests for the replicated service or application are directed to that server. For example, in a web-browsing environment a DNS lookup table, or zone file, is updated to indicate that requests for the replicated service are to be routed to the preferred server. The information described above is collected, and a new preferred server identified, on a regular or periodic basis. By periodically changing the preferred server, client requests are load-balanced between the participating servers."

Examiner maintains that the above disclosure of Jindal still reads on the claimed language "identifying ones of the servers to store a replica to the data based on at least one of utilization of the servers" as clearly explained in the final Office Action mailed 11/1/06.



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